

E-Filed 03/12/2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

No. C 09-03814 RS

Plaintiff,

**ORDER GRANTING
ADMINISTRATIVE REQUEST TO
SET DEADLINE TO FILE AMENDED
COMPLAINT**

v.

MARK BENNING, et al.,

Defendants.

On February 22, 2010 this Court issued an order granting Defendant Benning's motion to dismiss the FTC's Complaint. In the order, the Court granted the Commission leave to amend its Complaint but did not set a deadline by which it needed to do so. On March 8, 2010, Benning filed an administrative motion, pursuant to Local Rule 7-11, requesting that the Court impose a filing deadline. The Commission timely opposed the motion; it contends that an administrative motion is an improper vehicle for Benning's request. Local Rule 7-11 provides that "a party may require a Court order with respect to miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local rule or standing order of the assigned judge." The Commission argues that the scheduling of amended pleadings is governed by Federal Rules of Civil Procedure 15(a)(2) and 16(b)(3)(A). Additionally, the FTC points out that Local Rule 16-10 states that a case

1 management order should be used for “establishing deadlines for joining parties and amending
2 pleadings.” While the Commission’s quotations are accurately transcribed, the rules it cites
3 contemplate a situation where a party seeks to amend a pleading that is already in existence. Once
4 the Court dismissed the Commission’s Complaint (at least as it applied to Benning), this was no
5 longer the case. In light of the unusual circumstance this Court created when it dismissed the
6 Complaint but did not impose a filing deadline, Benning’s motion falls within the spirit of Local
7 Rule 7-11. Therefore, good cause appearing, the FTC shall file its amended complaint on or before
8 April 5, 2010.

9
10 IT IS SO ORDERED.

11 Dated: 03/12/2010

12 
13 RICHARD SEEBORG
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28